

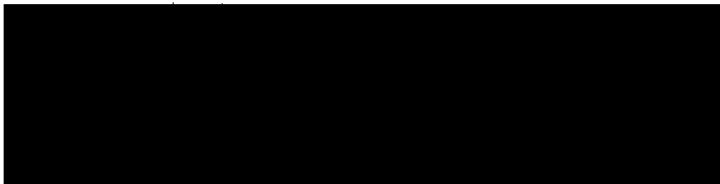


U.S. Department of Justice

Immigration and Naturalization Service

B3

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

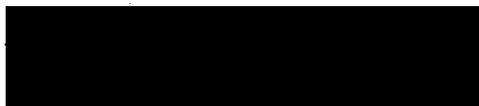


File: WAC 99 048 50089

Office: California Service Center

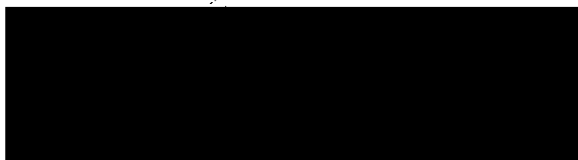
Date: OCT 25 2000

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Ferrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a "science and knowledge-based research and consulting organization." It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a research chemist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs, (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The petitioner must meet at least two

of six stated criteria. Counsel asserts that the petitioner has met the following criteria:

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

The petitioner submits evidence to show that the beneficiary is a member of the [REDACTED]. The record is entirely devoid of any evidence to establish that the [REDACTED] requires outstanding achievements of its members. If membership is open to any dues-paying professional in the field of chemistry, then the membership does not satisfy this criterion. If this membership does not require outstanding achievements, then questions of credibility must necessarily arise from the petitioner's claim, through counsel, that this membership satisfies the regulatory criterion.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits copies of eleven scholarly articles which cite the beneficiary's work. The articles are not, in any meaningful sense, about the beneficiary's work in the academic field. The inclusion of the beneficiary's name among the dozens contained in bibliographic footnotes to these articles does not mean that the articles are about the beneficiary or her specific contributions to the field. These citations are more properly considered as evidence of the impact of the beneficiary's own published work, which falls under its own criterion further below.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

The petitioner submits several witness letters, including the following representative examples.

[REDACTED] director of the petitioner's [REDACTED] states that the beneficiary, who "was hired as . . . an entry level staff member," "has great potential as a research scientist." [REDACTED] describes the beneficiary's work:

I hired [the beneficiary] directly from graduate school . . . to work on a project supported by the [REDACTED] in the area of [REDACTED] separation because of her knowledge and experience in the area of bioinorganic chemistry and coordination chemistry obtained during her thesis research. In her thesis research she pioneered a project in the area of supramolecules which is the molecular design of smart molecules. . . . She made a valuable contribution to the [REDACTED]

project and has showed creativity and resourcefulness. She has taken charge of projects from departing scientists . . . without interruption of the projects.

[REDACTED] a senior chemist at the petitioning institution, states:

Although [the beneficiary] was hired to work on a project with another group . . . , I was fortunate enough to also be able to utilize her skills on my project. She made an immediate impact on my program and was able to synthesize in one week, materials that others have not been able to do after a year of effort. The result was a catalyst far better than any other yet made.

[REDACTED] who supervised the beneficiary's doctoral research at the [REDACTED] states:

[The beneficiary] helped develop a new class of smart molecules that now are the subject of intense interest in my research group. . . . Her responsibilities [at the petitioning entity] have been in the development of catalysts for the synthesis of new polymeric materials.

The letters, while highly complimentary of the beneficiary's skills in the laboratory, do not indicate that the beneficiary is responsible for initiating the research described above; rather, the beneficiary has worked in an ancillary position, following the instructions of her superiors in furtherance of projects initiated by others. Some of these projects were already underway before the beneficiary became involved with them. In this sense, the beneficiary's work is not "original"; her contributions appear to be technical rather than creative.

[REDACTED] who studied at the [REDACTED] at the same time as the beneficiary, states that the beneficiary's "research at the [REDACTED] founded a new line of research in bioinorganic technology--they synthesis and design of 'intelligent molecules'--which has since produced at least four Ph.D. graduates." [REDACTED] does not indicate what impact or influence this "new line of research" has had among the vast majority of chemists who are not doctoral students at the [REDACTED]. The statutory standard is international recognition, rather than influence on the student body of one university.

All of the witnesses are or were employed by or connected with the petitioner or the [REDACTED] where the beneficiary obtained her doctorate. The range of witnesses does not demonstrate that the beneficiary's work has won significant attention outside of institutions where she has worked or studied.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The petitioner submits copies of seven articles that the beneficiary had co-authored. Researchers on four continents have cited the beneficiary's published work, indicating international interest in those articles. The petitioner's evidence satisfies this criterion.

The director denied the petition, stating that the petitioner has not met the burden of establishing that "the alien is recognized internationally as outstanding in a specific academic area" (emphasis in original), rather than simply earning a reputation among her employers and professors. On appeal, the petitioner submits four new letters. Two letters are from officials of the petitioning entity; one is from an official of a company which collaborates with the petitioner; and the fourth is from one of the beneficiary's former professors. Discussion of these letters appears further below. The petitioner also submits additional publications by the beneficiary, as well as further publications by others who cite the beneficiary's work.

The petitioner has already established that the beneficiary's work has appeared in international journals, and has been cited by others. Further evidence to this effect, therefore, is not of appreciable significance in this proceeding. The director had stated, in the notice of decision, that citations by others are not comparable to writings primarily about the beneficiary's work in particular. This observation holds true regardless of the number of times other researchers mention the beneficiary's work in passing in bibliographic footnotes.

Counsel argues "[p]resumably, an institution such as [the petitioner], which itself has a record of significant innovations and contributions to science and technology, should be given credit for its judgment that the beneficiary in this case is outstandingly qualified." In other words, discretion for determining eligibility should lie with the petitioner rather than the Service. This argument is not persuasive. The statute includes a requirement that the petitioning employer must have a record of achievement in research, as well as a separate requirement pertaining to the beneficiary's reputation in the field. Thus, the construction of the statute refutes counsel's argument. If Congress shared counsel's point of view, then the statute would require no proof except to show the petitioner's reputation. The reputation of the employer is a necessary element for eligibility, but not a sufficient one, and the petitioner's reputation does not infer or imply the beneficiary's eligibility for this restrictive visa classification.

Counsel further argues:

[The director] has failed to appreciate that in the particular field of chemistry in which she has been working the beneficiary does possess outstanding qualifications and has performed pioneering work that has created new possibilities for a wide array of applications which will be important to the research activities of [the petitioner] and the needs of its clients in divers industrial fields, and which will have important impact on the development of new catalytic processes for synthesis of chemical[s] and products of strategic and environmental importance.

Without a doubt, the beneficiary's work is important to the petitioner, as is evident from the petitioner's interest in employing the beneficiary. This interest, however, is not evidence of international recognition of the beneficiary's achievements. Evidence that the petitioner works with an international clientele does not establish that those clients have already recognized the beneficiary's work, and the petitioner's own recognition of the beneficiary cannot represent a kind of "proxy" recognition on behalf of those clients.

Counsel asserts "[t]he Service should also consider that the development of technology is occurring extremely rapidly and that many of the most important innovations are made by young researchers in fields which hardly existed a few years ago." Leaving aside counsel's failure to support this claim with empirical evidence, the claim that the most important research is conducted by "young researchers" does not imply that "young researchers," as a class, qualify for the visa classification sought in this proceeding. Eligibility rests on the beneficiary's qualifications as an individual; the classification is for "outstanding researchers" rather than "young researchers."

Counsel contends "[a] correct consideration of an 'Outstanding Researcher' petition should consider carefully that petitioner's needs and an explanation of the importance of the beneficiary's qualifications to further [the petitioner's] established research programs." Counsel offers no support for this interpretation. The law requires evidence of international recognition. A given alien is not internationally recognized as outstanding just because that alien's qualifications are well-suited to the needs of a U.S. employer.

[REDACTED] in his second letter on the beneficiary's behalf, discusses the beneficiary's research and its potential implications:

[The beneficiary] developed new synthetic technologies for molecules that support charge separation. These compounds are in a class of "smart molecules" and are the key to future nanotechnologies such [as] molecular switches in molecular scale electronic circuits. . . . The molecules that [the beneficiary] prepared are incredibly difficult to prepare.

At [the petitioning company, the beneficiary] has continued her enabling research of developing methods to make smart molecules that have custom designed properties. . . . Essentially, she has developed a methodology to produce "smart polymers" sufficiently inexpensive that they can be incorporated into low cost items such as diapers or grocery bags . . . that could be flushed down the toilet for disposal.

[REDACTED] does not indicate that the beneficiary's research in this area has progressed sufficiently to attract widespread notice and interest. Instead, he asks the reader to "imagine" possible future applications.

[REDACTED] in his second letter, emphasizes the importance of the beneficiary's field of research rather than the breadth of recognition that the beneficiary herself has earned in that field. Similarly, a letter from an official of one of the petitioner's client corporations focuses on the importance of the beneficiary to a particular project, without demonstrating that the beneficiary has earned international recognition for that work. Those with a direct interest in the beneficiary's work are highly complimentary of her skills and achievements. This praise, however, does not establish or imply a similar reaction throughout the international scientific community. International citations of the petitioner's work demonstrate some level of attention to her published articles, but by regulation articles alone are not sufficient to establish the required recognition.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of chemistry. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.